

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Tileyah Williams	Team: Squad #06	CCRB Case #: 202202837	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Wednesday, 04/27/2022 12:50 PM	Location of Incident: Broadway and Flushing	Precinct: 90	18 Mo. SOL 10/27/2023	EO SOL 10/27/2023	
Date/Time CV Reported Wed, 04/27/2022 4:45 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 05/05/2022 10:21 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. PO Salvatore Battimelli	18616	968268	TD 33
2. SGT Derek Sambolin	02201	943771	TD 33
3. Officers			

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. PO Alan Ramirez	11241	966291	TD 33
2. LT Thomas Marco	00000	918589	TD 33

Officer(s)	Allegation	Investigator Recommendation
A. PO Salvatore Battimelli	Force: Police Officer Salvatore Battimelli used physical force against § 87(2)(b)	
B. Officers	Force: Officers used physical force against § 87(2)(b)	
C. SGT Derek Sambolin	Force: Sergeant Derek Sambolin used physical force against § 87(2)(b)	
D. SGT Derek Sambolin	Force: Sergeant Derek Sambolin restricted § 87(2)(b) breathing.	
E. SGT Derek Sambolin	Abuse: Sergeant Derek Sambolin threatened § 87(2)(b) with the use of force.	

Case Summary

On April 27, 2022, § 87(2)(b) filed this complaint over the phone with IAB under log number § 87(2)(b).

On April 27, 2022, at approximately 12:50pm, Sergeant Derek Sambolin, Police Officer Salvatore Battimelli and Police Officer Alan Ramirez of Transit District 33 attempted to stop § 87(2)(b) in the vicinity of the Flushing Avenue subway station, for selling a swipe to another passenger. § 87(2)(b) ran, and PO Battimelli executed a forcible take down (**Allegation A: Force**, § 87(2)(g)). § 87(2)(b) felt officers kicking him while he was on the ground and felt Sgt. Sambolin punch him in the face (**Allegation B: Force**, § 87(2)(g)) and (**Allegations C: Force**, § 87(2)(g)). To get him into handcuffs, Sgt. Sambolin placed his knee near § 87(2)(b) right shoulder (**Allegation D: Force**, § 87(2)(g)). After § 87(2)(b) was handcuffed, he became physically aggressive with officers and Sgt. Sambolin took out his taser and threatened § 87(2)(b) to get up again (**Allegation E: Abuse of Authority**, § 87(2)(g)).

§ 87(2)(b) was arrested for obstructing governmental administration, resisting arrest, possessing a forged instrument, criminal possession of a controlled substance and an unauthorized sale of a farecard (**01 Board Review**). § 87(2)(b)

The investigation obtained body-worn camera (BWC) video from all three officers (**02, 03, 04 Board Review**). The investigation also received MTA, stationhouse, TARU, and commercial business footage (**05, 06, 07, 08**).

Findings and Recommendations

Allegation (A) Force: Police Officer Salvatore Battimelli used physical force against § 87(2)(b).

Allegation (B) Force: Officers used physical force against § 87(2)(b).

Allegation (C) Force: Sergeant Derek Sambolin used physical force against § 87(2)(b).

Allegation (D) Force: Sergeant Derek Sambolin restricted § 87(2)(b) breathing.

§ 87(2)(b) testified that on April 27, 2022, prior to 12:50 p.m., he arrived at Flushing Avenue in Brooklyn (**09 Board Review**). He walked down the stairs, near the MTA booth and spoke to a friend for ten minutes before noticing a woman having difficulty using the metro card machines. § 87(2)(b) used his metro card for the woman and though he did not ask her for anything, the woman gave him change. § 87(2)(b) assumed that the woman gave him change because he had a cane. § 87(2)(b) exited the train station and when he got to the street, he saw that his bus was arriving at the stop and ran to catch it. He did not hear any commands for him to stop running. Suddenly, § 87(2)(b) heard his right shoulder pop. He did not know if he was hit and if so, what he was hit with. He could not recall feeling anything, pain included. § 87(2)(b) dropped to his knees and then fell face down on the ground. He felt people kicking him in his ribs and telling him to stop resisting. Part of this interaction was a blur, and § 87(2)(b) could not remember what else he felt on his body nor what movements his body was making. § 87(2)(b) would not have been able to move his own body because the individuals had him pinned. § 87(2)(b) thought he may be getting robbed. § 87(2)(b) recalled that his head turned around to look up, but he did not know whether he turned his own head or whether one of the individuals turned his head. At this time, § 87(2)(b) saw that they were officers. The officers pulled § 87(2)(b) arms behind his back and handcuffed him. § 87(2)(b) did not have full mobility in his right arm. § 87(2)(b) felt sharp pains in his right shoulder which extended from his head to his toes. At some point, an officer punched him in his face, and he could not recall whether it was while he was lying on the ground or whether it was

before or after he was placed in handcuffs. § 87(2)(b) noted that he was later transported to § 87(2)(b) where he learned that he had a fractured collar bone.

§ 87(2)(b) medical records note that his right clavicle was fractured (**10 Board Review**).

§ 87(2)(b) did not allege a restricted breathing and it is being pled based on BWC footage.

PO Battimelli's BWC recording starts with him on the stairs of Flushing Avenue subway station (**03 Board Review**). At 37 seconds, as PO Battimelli reaches the bottom of the stairs, § 87(2)(b) is crossing the street, turns around, looks at PO Battimelli and starts running. PO Battimelli chases and catches him by extending his empty hands to the front of his body and touching either side of § 87(2)(b) body at 41 seconds. The contact is unclear. § 87(2)(b) falls to the ground with his left hand extended toward the front of his body and PO Battimelli goes down with him. The camera is then blocked. At 46 seconds, § 87(2)(b) is on the ground, facing up and PO Battimelli holds onto § 87(2)(b) sweater nearest his right shoulder. PO Battimelli turns him around by pushing his left shoulder toward the ground. Sgt. Sambolin's feet are in view. At 1:01 minutes, Sgt. Sambolin has his left knee on § 87(2)(b) upper back while § 87(2)(b) is face down on the ground. Sgt. Sambolin's right knee is bent and his right foot is flat on the ground. At 1:02 minutes, Sgt. Sambolin's right foot leaves the ground for less than a second until it is flat on the ground again. Sgt. Sambolin gets up at 1:06 minutes and PO Battimelli and PO Ramirez place § 87(2)(b) wrists in handcuffs. At 1:26 minutes, PO Ramirez pulls § 87(2)(b) to stand up. The officers walk him to the sidewalk and at 1:54 minutes, § 87(2)(b) says that they, "fucked his shoulder up." This recording depicts the clearest view of the incident.

PO Ramirez's BWC shows that when he arrives at PO Battimelli, Sgt. Sambolin and § 87(2)(b) his body immediately goes toward the ground, and he handcuffs § 87(2)(b) (**04 Board Review**). Both of PO Battimelli's knees are on the ground, on the side of § 87(2)(b)

Sgt. Sambolin testified that he and his team usually ride the subway trains but stopped at the Flushing Avenue station because people often broke the metro card machines so that they would be able to sell a lower fare (**11 Board Review**). Sgt. Sambolin was dressed in plainclothes and stood right at the turnstile. Sgt. Sambolin was in the station for approximately 15 minutes before he observed § 87(2)(b) arrive at the location and ask passengers whether they wanted to enter the station for one dollar. When he saw § 87(2)(b) swipe the woman into the turnstile, he signaled to PO Battimelli and PO Ramirez, who were standing nearby, to stop § 87(2)(b). He knew at that point that he was going to arrest § 87(2)(b) for selling a swipe. § 87(2)(b) looked around the subway station and made eye contact with Sgt. Sambolin. Sgt. Sambolin believed that although he was in plain clothes, § 87(2)(b) recognized him as a police officer because he was wearing a vest under his jacket which made it bulky. § 87(2)(b) began walking quickly, with his cane, out of the subway station. Sgt. Sambolin did not remember whether any officers said anything to § 87(2)(b) prior to him leaving the station. PO Battimelli, who was in uniform, followed § 87(2)(b) down the stairs of the station. When § 87(2)(b) started running from PO Battimelli, PO Battimelli told him to stop. Sgt. Sambolin believed that PO Battimelli used a forcible take down technique to get § 87(2)(b) to the ground. Sgt. Sambolin was approximately one car length behind PO Battimelli when this happened. He saw PO Battimelli use his arms to grab the back of § 87(2)(b) waist or torso. When § 87(2)(b) got to the ground, he was facing up and waved his arms around officers' torso and waist to resist arrest. It appeared that § 87(2)(b) was fighting PO Battimelli and PO Ramirez, but he could not see what § 87(2)(b) hands were contacting. PO Battimelli was on the side of § 87(2)(b) kneeling trying to control § 87(2)(b) hands. When Sgt. Sambolin approached § 87(2)(b) he tried to gain control of § 87(2)(b) hands and used a hand strike to § 87(2)(b) head with a closed fist. He struck him to try to gain compliance because officers were struggling to

handcuff him. He did not recall where on § 87(2)(b) head he contacted. He did not recall how § 87(2)(b) head reacted to the strike. Sgt. Sambolin did not kick § 87(2)(b) in the ribs, and he did not see his partners do this. § 87(2)(b) demeanor and actions remained the same after the strike. § 87(2)(b) turned his body around to being face down and his hands went under his body, near his waistband. He also moved his legs in a kicking motion. Sgt. Sambolin noted that § 87(2)(b) hands being under his body was dangerous and that § 87(2)(b) could have had a firearm, a knife or something else to assault officers. Sgt. Sambolin tried to control § 87(2)(b) arms and hands and placed his shin on one of § 87(2)(b) shoulders, and not his back. This was done quickly, and § 87(2)(b) was handcuffed seconds later. Sgt. Sambolin made this movement in an attempt to handcuff § 87(2)(b) and he did not believe that he applied pressure with his knee as his weight was on his other leg. This action made him gain compliance. § 87(2)(b) complained of shoulder pain and Sgt. Sambolin learned after § 87(2)(b) went to the hospital, that one of his clavicles were fractured. He believed that the fracture happened when PO Battimelli took him down.

PO Battimelli recalled a similar series of events (**12 Board Review**). He did not see § 87(2)(b) sell the swipe and did not know why he was stopping § 87(2)(b) when Sgt. Sambolin directed him to. As he got to the bottom of the subway stairs, he yelled that he was the police and for § 87(2)(b) to stop. When he caught up to § 87(2)(b) he used one of his open palms to grab § 87(2)(b) upper left arm and used his other hand to hold the back of § 87(2)(b) coat. He did not intend to take § 87(2)(b) down and would have preferred if § 87(2)(b) just stopped when he grabbed him, so that he could arrest him. Instead, § 87(2)(b) fell, and PO Battimelli fell to the side of him. § 87(2)(b) kicked his feet and waved his arms all around and hit PO Battimelli in his chest. § 87(2)(b) put his arms under his body and did not allow officers to get his hands. PO Battimelli did not kick § 87(2)(b) in his ribs and did not see his partners do so. PO Battimelli did not see Sgt. Sambolin strike § 87(2)(b) but later learned from Sgt. Sambolin that he had. He did not recall seeing Sgt. Sambolin place his knee on § 87(2)(b) shoulder or back. He heard § 87(2)(b) complain of shoulder pain and learned later that his collarbone was fractured but said that he did not believe any of his actions, including falling with § 87(2)(b) could have fractured his collarbone and did not know how it was fractured.

PO Ramirez recalled a similar series of events to that of Sgt. Sambolin (**13 Board Review**). He did not see what contact PO Battimelli made with § 87(2)(b) before they both fell. He denied kicking § 87(2)(b) and did not see his partners do so. He also did not see Sgt. Sambolin punch § 87(2)(b) or place his knee on § 87(2)(b) shoulder or back. He did see § 87(2)(b) moving his arms around and preventing the officers from placing him in handcuffs.

§ 87(2)(b) was arrested for obstructing governmental administration, resisting arrest, possessing a forged instrument, criminal possession of a controlled substance and an unauthorized sale of a farecard (**01 Board Review**). Threat, Resistance, and Injury report § 87(2)(b) notes that officers used a hand strike, forcible take down and wrestling/grappling (**14 Board Review**). § 87(2)(b) suffered minor lacerations/abrasion, broken/fractured bone(s).

Sgt. Sambolin's MOS photo notes that he is 235 pounds (**15 Board Review**). His pedigree sheet completed by himself on February 6, 2023, notes that he is 260 pounds (**16 Board Review**).

Officers may use force when it is reasonable to ensure the safety of a member of the service (MOS), a third person, to otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody New York City Patrol Guide Procedure 221-01 (**17 Board Review**).

§ 87(2)(b) testified that he had been running for a bus prior to being taken down by officers; however BWC footage shows him turning to look at PO Battimelli before running. The investigation determined that § 87(2)(b) ran to avoid the officer and evade an arrest. The footage

also showed that before § 87(2)(b) fell to the ground, PO Battimelli extended his empty hands toward § 87(2)(b) and contacted either side of his body to stop him. § 87(2)(b) said that before he went down, his shoulder popped, and he began feeling pain. The investigation determined that PO Battimelli's take down led to § 87(2)(b) broken clavicle, though it is unclear how PO Battimelli's actions could have led to this injury. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b) testified that as he was on the ground, he felt people kicking him. The BWC footage showed that the only people around him while he was on the ground were the officers. The BWC does not show all the officers' feet as they arrive at § 87(2)(b) but very soon after they arrive, the angles show officers in positions which would not have allowed them to kick § 87(2)(b) and the officers denied kicking him. § 87(2)(b) could not identify who kicked him and neither the footage nor officers' testimony were helpful in determining which officer (s) would have been the subject of this allegation if it did occur. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b) testified that the portion of the incident where he was being handcuffed was a blur to him. He noted that he could not recall what movements his body was making but believed that he could not move because officers had him pinned down. All the officers testified that § 87(2)(b) moved his hands and body around to avoid being handcuffed. The footage shows that PO Battimelli turned § 87(2)(b) body from upward to downward, but it does not show any other movements from § 87(2)(b) and it did not show his hands until they are behind his back being placed in handcuffs. The footage shows that all three officers assisted with getting § 87(2)(b) hands behind his back and that it took them approximately 23 seconds to place him in handcuffs. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

MOS will use only the reasonable force necessary to gain control or custody of a subject. Officers should consider the nature and severity of the crime/circumstances, actions taken by the subject, duration of the action, immediacy of the perceived threat or harm to the subject, members of the service, and/or bystanders, whether the subject is actively resisting custody, whether the subject is attempting to evade arrest by flight, number of subjects in comparison to the number of MOS, size, age, and condition of the subject in comparison to the MOS, subject's violent history, if known, presence of hostile crowd or agitators, subject apparently under the influence of a stimulant/narcotic which would affect pain tolerance or increase the likelihood of violence New York City Patrol Guide Procedure 221-01 (17 Board Review). Sitting, kneeling, or standing on the chest or back of a subject in a manner that compresses the diaphragm, thereby reducing the subject's ability to breathe is prohibited.

Sgt. Sambolin said that he used his shin to place it over § 87(2)(b) shoulder to control his arms so that they could handcuff him. He also noted that he did it quickly and that he did not apply pressure. The BWC footage shows that Sgt. Sambolin had his knee on the right side of § 87(2)(b) upper back for approximately five seconds and that at one point, the leg which he said held his weight was off the ground, leaving him to apply 260 pounds to § 87(2)(b) back.

§ 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Allegation (E) Abuse of Authority: Sergeant Derek Sambolin threatened § 87(2)(b) with the use of force.

§ 87(2)(b) did not allege that he was threatened with a taser, and it is being pled based on BWC footage.

PO Ramirez's BWC recording shows that at 3:30 minutes, PO Ramirez and PO Battimelli arrive on the sidewalk and near a wall with § 87(2)(b) handcuffed (**04 Board Review**). PO Battimelli tells § 87(2)(b) to face the wall and § 87(2)(b) jerks his body toward PO Battimelli and says, "Fuck you." The view is obstructed, however, PO Battimelli says, "Spit in my face again." At 3:45 minutes, Sgt. Sambolin instructs the officers to sit § 87(2)(b) down. It is unclear how § 87(2)(b) gets down, but the angle shows that PO Battimelli touches the back of his arms and PO Ramirez touches the front of his arms as this happens. At 4:04 minutes, Sgt. Sambolin repeatedly tells § 87(2)(b) to stop and, "Get up again and watch what happens" thrice. § 87(2)(b) right leg is bent with his knee facing upwards. His knee moves calmly sideward and back upward and Sgt. Sambolin repeats, "Stop." PO Battimelli is holding § 87(2)(b) right shoulder as he looks in his pockets and bookbag. § 87(2)(b) is slouched and tells PO Battimelli calmly to get off his shoulder and continues to move his knee up and down. His left knee remains bent and immobile. At 4:39 minutes, Sgt. Sambolin tells § 87(2)(b) that he had a crack pipe, and § 87(2)(b) says that it is not his. At 4:52 minutes, as PO Battimelli releases § 87(2)(b) shoulder, he sits up. At 4:58 minutes, while § 87(2)(b) is sitting, he calmly tells PO Battimelli to get off his shoulder. At 4:55 minutes, Sgt. Sambolin unzips his fanny pack that is wrapped around his shoulder/chest and takes out his taser. He holds the taser in his right hand on his right side and § 87(2)(b) says, "Oh now you're ready to tase me." Sgt. Sambolin says, "Get up again. Go ahead." § 87(2)(b) does not appear to attempt to stand. He wiggles his right and left knees as PO Battimelli searches him. Sgt. Sambolin places his taser back in his fanny pack at 5:50 minutes, as § 87(2)(b) continues to move his knees from side to side.

§ 87(2)(b) did not recall all of what happened after he was handcuffed (**09 Board Review**). He knew that at some point he was sitting on the side of the curb looking at police officers and that he was later transported to an unknown stationhouse.

Sgt. Sambolin testified that after PO Ramirez and PO Battimelli handcuffed § 87(2)(b) they stood him up and brought him near the entrance of the subway station (**11 Board Review**). § 87(2)(b) appeared angry and aggravated because he was yelling and cursing. PO Ramirez and PO Battimelli attempted to search § 87(2)(b) and he began moving around. § 87(2)(b) attempted to bite one of the officers by moving his head toward the officers' arm with an open chomping mouth and spit on PO Battimelli's face. Sgt. Sambolin noted that § 87(2)(b) was not secure at that point because they had to wait for a vehicle to transport him and that on Flushing Avenue, it was common for crowds to form. Officers sat § 87(2)(b) down to make him more secure, and prevent him from wiggling out of the handcuffs, destroying evidence, or running away. Officers may have pulled his legs out, told him to sit down and held his sides down to get him down. § 87(2)(b) tried to stand once officers sat him down. He also moved his shoulder back and forth. Officers searched § 87(2)(b) and recovered a crack pipe. Sgt. Sambolin told § 87(2)(b) to stay down. Sgt. Sambolin called for a vehicle to transport § 87(2)(b) to the stationhouse. He called an ambulance to arrive at the stationhouse for § 87(2)(b). When Sgt. Sambolin told § 87(2)(b) to, "Get up again and watch what happens", § 87(2)(b) was attempting to stand up. Sgt. Sambolin took out his taser and held it to his side just in case, because § 87(2)(b) was moving around, and it was possible that he could get out of the handcuffs. He noted that people have gotten out of the handcuffs before and that the incident happened very quickly, so he was unsure of whether the handcuffs were double locked.

- Sgt. Sambolin has been a member of service for 16 years and has been a subject in 20 other CCRB complaints and 48 other allegations, three of which were substantiated.
 - Case 200801475 involved substantiated allegations of a vehicle stop and discourteous action against Sgt. Sambolin. The Board recommended charges and the NYPD imposed 25 days of vacation.
 - Case 201507834 involved a substantiated allegation of a vehicle search against Sgt. Sambolin. The Board recommended command discipline B and the NYPD has not imposed any discipline.
 - Case 200806906 involved an allegation of physical force against Sgt. Sambolin and it was closed as exonerated.
 - Case 200906024 involved an allegation of a threat of force against Sgt. Sambolin and it was closed as complainant uncooperative.
 - Case 201009309 involved allegation of physical force and one allegation of a gun as a club against Sgt. Sambolin, both of which were closed as alleged victim uncooperative.
 - Case 201014395 involved an allegation of physical force an allegation of threat of force which were closed as exonerated.
 - Case 201102296 involved an allegation of physical force which was closed as complaint withdrawn.
 - Case 201102343 involved an allegation of physical force against Sgt. Sambolin and was closed as complainant unavailable.
 - Case 201311753 involved an allegation of a nightstick as a club and an allegation of physical force against Sgt. Sambolin which were closed as exonerated.
 - Case 201404729 involved an allegation of force with a vehicle against Sgt. Sambolin which was closed as unsubstantiated.
 - Case 201504268 involved an allegation of physical force and an allegation of pepper spray which were closes as alleged victim unavailable.
- PO Battimelli has been a member of service for three years and has been a subject in one other CCRB complaint, to date this complaint is still active.

- § 87(2)(g)

Mediation, Civil, and Criminal Histories

- This complaint was not suitable for mediation.
- On February 14, 2023, the investigator inquired about whether a NOC was filed with the New York City Office of the Comptroller regarding this incident and the results will be added to the case file upon receipt (**20 Board Review**).

• [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad: 6

Investigator:	<u>Tileyah Williams</u>	<u>SI Tileyah Williams</u>	<u>02/15/2023</u>
	Signature	Print Title & Name	Date

Squad Leader:	<u>Jessica Peña</u>	<u>IM Jessica Peña</u>	<u>2/15/2023</u>
	Signature	Print Title & Name	Date

Reviewer:

Signature

Print Title & Name

Date